

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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CARLOS PINEDA and ALEXANDRA PEREZ,	)	
Plaintiffs,	)	C.A. No. 05-10216-JLT
	)	
v.	)	
	)	
DANIEL KEELER, DENNIS HARRIS, JOSEPH R.)		
WATTS, JOSEPH P. TOOMEY, WILLIAM J.)		
GALLAGHER, EDWARD GATELY, JANINE )		
BUSBY, and the CITY OF BOSTON,	)	
Defendants.	)	
	)	

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**PLAINTIFFS' L.R. 56.1 STATEMENT OF MATERIAL FACTS IN OPPOSITION TO DEFENDANTS WATTS AND TOOMEY'S MOTION FOR SUMMARY JUDGMENT**

The Plaintiffs hereby submit the following statement of material facts in dispute:

1. Although the responding officers were looking for a white van that was traveling with an unspecified model of Honda, when they turned onto Melnea Cass Boulevard, they saw only a white Honda Civic. There was no sign of any white van. Depo. Gallagher, June 8, 2007, pg. 10, attached hereto as Exhibit A.
2. Despite not seeing the white van that was said to have been at the scene of the shooting, officers began to follow the Honda. When they tried to pull it over, the driver fled. At that time, Officer Foley was able to identify the driver as someone known to the police, a Norberto Serrano, aka Luis Cruz. Foley now knew that the driver of the Civic was not Plaintiff Pineda. Ex. A, pg. 12; Incident Report, attached hereto as Exhibit B.
3. When the Honda finally stopped, police followed one, and only one, occupant into 11 Fermoy Heights, the Plaintiffs' apartment. Ex. A, pg. 16. The other two occupants were female and did not go into the apartment. Report of Coyne, April 28, 2003, attached hereto as Exhibit C.

4. When the police announced their presence, Plaintiffs Pineda and Perez were asleep.  
Depo. Perez, May 17, 2006, pg. 52, attached hereto as Exhibit D.
5. Pineda answered the door and told the police that his car “was gone.” Ex. D, pg. 57.
6. As the officers stormed in, one asked whether the missing car was “a white Honda Civic.” Ex. D, pg. 64.
7. When Pineda said yes, officers immediately grabbed him, pushed him against the wall, and handcuffed him. Ex. D, pg. 57, 65. While handcuffing him, an officer slammed Pineda against the wall twice, face-first. Pineda IAD Statement, pg. 12, attached hereto as Exhibit E; Depo. Pineda, May 17, 2006, pg. 72, attached hereto as Exhibit F.
8. The arresting officer was a Boston Police officer. Ex. D, pg. 71, Ex. E, pg. 82.
9. At this time, there were fifteen officers in the Plaintiffs’ house. Ex. D, pg. 78. All of the officers were from the Boston Police Department except one, who was a Massachusetts State Trooper. Ex. D, pg. 78.
10. At one point during the night, Perez went into her son’s bedroom and saw that a mattress had been thrown on the floor and that everything else was out of place. Ex. D, pg. 90.
11. She later observed that the police had opened drawers and flipped other mattresses as well. Ex. D, pg. 109, 111. It seemed like everything they owned had been thrown on the floor. Ex. D, pg. 110.
12. Police also flipped over a “potty” that the Plaintiffs’ young son used, causing the floor to be covered in feces. Ex. E, pg. 18.
13. The Plaintiffs’ kept their apartment neat, cleaning it twice a week. Ex. F, pg. 130
14. At the time of the search, the individual the police actually admit to arresting, Serrano, was already handcuffed, Ex. D, pg. 94, as was Pineda. Ex. F, pg.135.

15. Perez did not agree to the search until after Serrano and Pineda had been arrested and until after the searches had already begun. Ex. D, pg. 194.
16. In addition, the police told her they would get a warrant whether she agreed to their request or not. Ex. D, pg. 194.
17. Serrano later admitted that he had taken the Plaintiffs' Honda without permission. Ex. D, pg. 127.
18. Defendant Watts was the supervising sergeant of the patrol officers on the night in question. Depo. Watts, June 8, 2007, pgs. 11, 17, attached hereto as Exhibit G.
19. Toomey was his equal in terms of authority and responsibility. Ex. G, pg. 11.
20. Watts arrived at the scene of the arrest early enough to see the first officers run into the Plaintiffs' residence. Ex. G, pg. 17.
21. When he entered the apartment, Watts was in charge. Ex. G, pg. 20.
22. Although he claims he did not see anyone arrested, Ex. G, pg. 21, his role as a supervisor was to make sure no one's rights were violated, and to know who was arrested. Ex. G, pg. 25.
23. Despite being the supervisor in charge and being from the district in which the arrest took place, Watts claims to have given no orders to anyone that night. Ex. G, pg. 31.
24. Watts' lack of "accountability" caused the Plaintiff Pineda to be arrested without "just cause," according to the Department. See IAD Assessment, attached hereto as Exhibit H.
25. Toomey's role as supervisor was to make sure everyone was doing their job. Depo. Toomey, June 1, 2006, pg. 17, attached hereto as Exhibit I.
26. Toomey claims that he does not know who was in charge at the apartment on that night. Ex. I, pg. 24.

27. He claims that he has no knowledge of what happened to Pineda. Ex. I, pgs. 36, 46.
28. He did state, however, that patrol supervisors, such as Watts and himself, should know who is and is not arrested at the scene of an alleged crime. Ex. I, pg. 46.
29. Toomey's lack of supervision caused the unjustified arrest of Pineda. Ex. I, pg. 80.

Respectfully Submitted,  
Plaintiffs Carlos Pineda and Alexandra Perez,  
By their attorneys,

//s// Michael Tumposky  
Stephen Hrones  
BBO No. 242860  
Jessica D. Hedges  
BBO No. 645847  
Michael Tumposky  
BBO No. 660618  
Hrones, Garrity & Hedges  
Lewis Wharf – Bay 232  
Boston, MA 02110-3927  
T) (617) 227-4019

#### **CERTIFICATE OF SERVICE**

I, Michael Tumposky, hereby certify that, on this the 11th day of July, 2007, I have caused to be served a copy of this document, where unable to do so electronically, on all counsel of record in this matter.

//s// Michael Tumposky  
Michael Tumposky

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1 a white van.

2 Q. Was the white van one of the --  
3 were the guys charged with a murder in a white  
4 van?

5 A. Suspects were seen leaving the  
6 scene in a white van.

7 Q. And when they stopped the white  
8 van, not the Honda later on, what -- let me  
9 change that.

10 When they stopped the guys who were  
11 charged with the murder, were they in a white  
12 van?

13 A. I wasn't there.

14 Q. You weren't involved at all with  
15 that?

16 A. I wasn't involved in that, no.

17 Q. In any event, you see a white  
18 Honda?

19 A. Yes.

20 Q. And what's it doing?

21 A. It's traveling towards us on Cass  
22 Boulevard, but it's all by itself, there's not a  
23 white mini van with it.

24 Q. And what did you do?

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1 Q. Well, who got away?

2 A. The other people in the car.

3 Q. Who are the other people in the  
4 car?

5 A. I wasn't -- I wasn't -- I don't  
6 know who got out.

7 Q. So what did you do then?

8 A. We stayed at the car.

9 Q. For how long?

10 A. Twenty minutes to half an hour.

11 Q. And then where did you go?

12 A. We were ordered by a superior to go  
13 upstairs to the -- to the apartment.

14 Q. What superior ordered?

15 A. I'm not sure, sir.

16 Q. You're from D-4?

17 A. Yes. It wasn't one of ours, I know  
18 that. I didn't recognize the voice on the  
19 radio.

20 Q. Oh, someone on the radio ordered  
21 you up there?

22 A. Yes.

23 Q. Someone who was in the apartment?

24 A. I don't know.

June 8, 2007

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1 Q. You followed him.

2 A. Yes, we did.

3 Q. Was anyone else following him?

4 A. No, not at that time.

5 Q. Did others join you later?

6 A. Yes. I was on the radio that night  
7 my partner was driving, and I informed the  
8 dispatcher that we were chasing a car that could  
9 possibly be involved in a shooting down at  
10 Albany and Mass.

11 Q. Did you see who was driving?

12 A. I didn't, no. My partner got a  
13 good look, but I did not.

14 THE REPORTER: Your partner got a  
15 good look?

16 THE WITNESS: Yes.

17 Q. (By Mr. Hrones) Who is your  
18 partner?

19 A. Patrick Foley (phonetic).

20 Q. He was in the same police cruiser?

21 A. Correct.

22 Q. He got a good look?

23 A. Correct.

24 Q. And did he identify him later on as

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# BOSTON POLICE INCIDENT REPORT

Attachment #3

ORIGINIAL  SUPPLEMENTARY

KEY SITUATIONS

TYPE OF INCIDENT VAL	CRIME CODE 0	COMPLAINT NO. 030217876		REPORT DIST. B2	CLEARANCE DIST.
		STATUS		DATE OF OCCUR. A.04/28/03	B.
LOCATION OF INCIDENT CASS BL. KERR WAY		APT.	DISPATCH TIME	TIME OF OCCUR. A.03:00 AM	B.
VICTIM-COMP. (LAST, FIRST, MI) COMM OF MASS		PHONE (617)-343-4250	SEX	RACE	MARITAL STATUS

ADDRESS	APT.	OCCUPATION	AGE 0	D.O.B.
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PERSON REPORTING GALLAGHER, WILLIAM	ADDRESS 650 HARRISON AVE, BOSTON, MA, 00000-0000	APT.	PHONE (617)-343-4250
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WAS THERE A WITNESS TO THE CRIME

PERSON INTERVIEWED	AGE	LOCATION OF INTERVIEW	APT.	HOME ADDRESS	APT.	TELEPHONE	A <input checked="" type="checkbox"/>
							RES <input checked="" type="checkbox"/> BUS <input type="checkbox"/>

NUMBER OF PERPETRATORS : 1 — CAN SUSPECT BE IDENTIFIED AT THIS TIME

PERSON STATUS ARRESTED	NAME (LAST, FIRST, MI) CRUZ, LUIS	S.S. NO. 000-00-0000	BOOKING NO. 20030077604	PHOTO NO.	ALIAS	<input checked="" type="checkbox"/> <input type="checkbox"/> YES NO
WARRANT NO.	ADDRESS 1 SHANDON RD, DORCHESTER, MA, 02124-0000	SEX MALE	RACE WHITE HISPANIC	AGE 20	HEIGHT 5-04	WEIGHT 2/23/83
SPECIAL CHARACTERISTICS (INCLUDING CLOTHING)						HAIR DARK BROWN EYES BROWN

CAN SUSPECT VEHICLE BE DESCRIBED

VEHICLE STATUS STOLEN TOWED SUSPECT VEHICLE	REG. STATE MA	REG. NO. 8482YE	PLATE TYPE	YEAR (EXP) 2005	MODEL CIVIC	<input checked="" type="checkbox"/> <input type="checkbox"/> YES NO
VEHICLE MAKE YEAR HONDA - 1990	VEHICLE NO. 2HGKD7360LH552067	STYLE HATCHBACK	COLOR (TOP-BOTTOM) WHITE - WHITE			
OPERATOR'S NAME CRUZ, LUIS		LICENSE NO.	OPERATOR'S ADDRESS 1 SHANDON RD, DORCHESTER, MA, 00000-0000			
OWNER'S NAME PEREZ-ROJAS, ALEXANDRA		OWNER'S ADDRESS	1 SHANDON RD, DORCHESTER, MA, 00000-0000			

CAN PROPERTY BE IDENTIFIED

PROPERTY STATUS	TYPE OF PROPERTY	SERIAL OR POINT GUARD NO.	BRAND NAME-DESCRIPTION	MODEL	VALUE	OUR <input checked="" type="checkbox"/> YES NO

E	IS THERE A SIGNIFICANT M.O.			
TYPE OF WEAPON-TOOL	NEIGHBORHOOD	TYPE OF BUILDING	PLACE OF ENTRY	<input checked="" type="checkbox"/> <input type="checkbox"/> YES NO
WEATHER	LIGHTING	TRANSPORTATION OF SUSPECT	VICTIM'S ACTIVITY	
UNUSUAL ACTIONS AND STATEMENTS OF PERPETRATOR		RELATIONSHIP TO VICTIM		

IS THERE ANY PHYSICAL EVIDENCE (DESCRIPTION AND DISPOSITION IN NARRATIVE)

IS THERE ANY OTHER REASON FOR INVESTIGATION (REASON BELOW)

BLOCK NARRATIVE AND ADDITIONAL INFORMATION

F	NO	ABOUT 3:00 AM OFFICERS FOLEY AND GALLAGHER IN THE D102A UNIT WERE RESPONDING TO A RADIO CALL FOR A PERSON SHOT AT THE MOBIL GAS STATION ON EAST BERKELEY ST. WHILE ENROUTE FROM THE FENWAY OFFICERS WERE FLAGGED DOWN BY B/N FEMALE DRIVING AN OLDER MODEL GREEN FORD TAURUS AT THE INTERSECTION OF MASS AVE AT TREMONT ST. THE OPERATOR OF THE TAURUS SAID "ARE YOU LOOKING FOR THE CARAVAN ? " IT IS AT ALBANY AND CASS BLVD.... IT IS ON CASS BLVD NOW AND THERE IS WHITE HONDA WITH IT ". OFFICERS FOLEY AND GALLAGHER PROCEEDED TO CASS BLVD VIA TREMONT ST. OFFICER FOLEY SPOTTED A WHITE HONDA TAKE A LEFT ONTO KERR WAY FROM CASS BLVD. OFFICERS FOLLOWED THE HONDA MASS REG 8482YE UNTIL IT PULLED OVER AT THE CURB AND THE DRIVER'S DOOR OPENED. OFFICERS ACTIVATED THE BLUE LIGHTS AT THAT TIME AND EXITED THEIR CRUISER AS THE OFFICERS APPROACHED THE WHITE HONDA THE OPERATOR SPED AWAY DOWN KERR WAY TOWARD SHAWMUT AVE WHERE IT PROCEEDED THE WRONG WAY FOR SEVERAL BLOCKS. OFFICERS USING THEIR RADIO BROADCAST THE DIRECTION OF THE WHITE HONDA AND THE LICENSE PLATE OVER THEIR DEPARTMENT RADIO WHILE FOLLOWING WITH THEIR BLUE LIGHTS AND SIREN ON. DURING THIS TIME OFFICERS OBSERVED THE WHITE HONDA TO BE TRAVELING WELL ABOVE THE SPEED LIMIT OF 30 MPH, FAILING TO STOP FOR RED LIGHT AT COLUMBIA RD AND DUDLEY ST. OFFICERS WERE JOINED BY UNITS FROM C-11, B-2, B-3, C-6, D-4, ASA WELL AS STATE POLICE. OFFICERS TOOK SUSPECT LUIS CRUZ INTO CUSTODY AT 11 FERMOY HEIGHTS APT 81. FO FOLEY POSITIVELY IDENTIFIED DRIVER LUIS CRUZ AS THE OPERATOR OF THE WHITE HONDA. PO FOLEY SAW THE SUSPECT'S FACE AT KERR WAY BEFORE THE CAR FLED. MR LUIS CRUZ DOES NOT HAVE A LICENSE TO OPERATE A MOTOR VEHICLE AT 11 FERMOY ST OFFICERS SPOKE TO ALEXANDRA PEREZ 3/11/82 AND HER HUSBAND CARLOS PINEDA 10/16/83 WHO STATED THAT LUIS CRUZ HAS LIVED WITH THEM FOR ABOUT A MONTH AND THEY DID NOT	<input checked="" type="checkbox"/> <input type="checkbox"/> YES NO
---	----	---	--

GIVE HIM PERMISSION TO USE THEIR CAR, AND HE MUST HAVE TAKEN THE KEYS FROM MR PINEDA'S JACKET  
WHITE HONDA MASS REG 8482YE TOWED TO BOSTON POLICE HQ BY AUTO SERVICES CLAIM # 2386, PO PANKIEVICH  
ACCOMPANIED THE CAR TO ID UNIT AT BOSTON POLICE HQ, MASS UNIFORM CITATIONS X30678301-2-3-4 ISSUED TO  
DRIVER LUIS CRUZ.

UNIT ASSIGNED D102A	TOUR OF DUTY 1	REPORTING OFFICER'S NAME WILLIAM J GALLAGHER	REPORTING OFFICER'S ID 11687	PARTNER'S ID P NO
DATE OF REPORT 04/28/03	SPECIAL UNITS NOTIFIED/REPORTING IDENTIFICATION UNIT	TELETYPE NO.		
TIME COMPLETED 07:44 AM	PAT. SUP. NAME LARRY C HOBSON	DUTY SUP. ID 7445	DUTY SUP. ID 7445	

# Boston Police

DEPARTMENT

1 Schroeder Plaza, Boston, MA 02120-2014

Date: April 28, 2003

To: Captain Albert Goslin, Commander Area B-2/BFS

From: Police Officer James A. Coyne, ID #10952

Subject: Death Investigation CC# 030217815

Sir,

I, PO James Coyne, respectfully submit that at approximately 0242 hr while assigned as the B454A assisted in the pursuit of MA 8482YE (White Honda Civic Coupe Hatchback). This vehicle was wanted concerning a Double shooting/ Homicide that had occurred on D-4 on Berkeley St.

Operations had broadcast motor vehicle possibly fleeing onto Dst. 02. The D102A stopped said m/v on Kerr Way at which time it fled. The B453A picked up said m/v and began pursuing it. Said m/v was pursued by multiple units ending at 23 Shandon Road at which time operator, tentatively I'D -(Norberto Serrano) fled on foot. Suspect was attired in black boots, gray pants and gray long-sleeve shirt with design on front. PO Coyne engaged in a foot pursuit of suspect who entered 11 Fermoy Heights and was observed entering Unit #81. Responding officers made peaceful entry and located suspect, now unclothed, hiding behind the bedroom door. The clothing was located discarded on the floor at the feet of the suspect. Suspect was positively ID by PO Coyne and officers in the D102A-PO's Foley and Gallagher. Suspect arrested by PO Fay and Coyne. Transported to Dst 4 and booked see booking # 03-00776-04. Clothing recovered by PO Coyne and placed in BPD Brown Paper Evidence Bags.

Upon return to Dept#2015, the HK01A-PO's Roby and B. Griffiths informed officers that on arrival they observed a female standing outside MA 8482YE. This female Identified as Marta E. Jimenez DOB 10/25/1987 1849 Columbus Ave. #2AQ Roxbury, MA was detained and seated in the rear of cruiser. Ms. Jimenez was advised of her Miranda Warning, waiving them and stated she was the rear seat passenger of m/v and that "Berto" was driving. She stated that her girlfriend, tentatively I'D as Irma Ramos 8 Ernst St. #2 was the front seat passenger. Jimenez stated she was picked up by "Berto" about 1 hour before the pursuit and no other persons had entered or exited said m/v. Jimenez further stated that Irma just walked away after the car stopped and "Berto" fled.

Jimenez was detained until the arrival of Homicide. Homicide Sgt. Det. Keeler V902 and Det. Harris V811 and arrived and were given an oral report of actions. Jimenez was taken to Homicide Unit for questioning were she FIO'd and released pending further investigation. The clothing recovered was transported to Homicide and relinquished to Det Harris of Homicide for chain on custody. Per the V902 Sgt. Det Keeler, this officer remained at Homicide assisting investigators with multiple witnesses and suspects. At approximately 1400 hr I was relieved of duty and returned to District 2 and completed this report.

Respectfully submitted,

PO James A. Coyne  
Squad 5 / Tour 1

1 A. Yes.

2 Q. And you don't know where your father was?

3 A. No.

4 Q. And you didn't know where Norberto was?

5 A. No.

6 Q. What happened next after you went to sleep?

7 A. After I went to sleep, I woke up. I looked  
8 out the window. I see that the car is not  
9 where we -- he parked it.

10 I shake him, and tell him, "Carlos,  
11 Carlos. The car's missing."

12 And then I see the lights and the  
13 flashlights all over the place outside.

14 Q. Do you know what time this is?

15 A. I don't know the exact time, no.

16 Q. What's the thing that woke you up?

17 A. The commotion.

18 Q. And what commotion was it?

19 A. Outside, the sirens, people screaming. Like,  
20 cops running, talking out loud.

21 Q. Did you see how many cars were outside,  
22 police cars?

23 A. I didn't see the police cars. I only saw the  
24 lights.

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1 Q. And who was with you at that time?

2 A. Carlos.

3 Q. And what did you do when you heard the knock?

4 A. I told him that somebody was knocking.

5 Q. And what did he say?

6 A. He went to open the door.

7 Q. And did you go with him?

8 A. Yes.

9 Q. Where were you standing when Carlos was at  
10 the door?

11 A. Behind him.

12 Q. What happened next?

13 A. He opened the door. And he said that the car  
14 was gone, our car was missing. And they  
15 grabbed him. They pushed him against the  
16 wall and then handcuffed him.

17 Q. When the door opened, did you hear -- at any  
18 point did you hear anyone identify  
19 themselves?

20 A. No.

21 Q. Did you hear the words "Boston Police" at any  
22 point?

23 A. I don't recall.

24 Q. Did you hear any other words like "Police" at

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1 A. No.

2 Q. -- in terms of guns and flashlights?

3 A. When they entered my apartment, I knew they  
4 had their guns out and their flashlights.

5 Q. But at the door --

6 A. At the door --

7 Q. Let us just focus on the door.

8 A. At the door, I don't remember none of the  
9 rest except for that one.

10 Q. When Carlos opened the door, did he say  
11 anything to the officers?

12 A. Yes.

13 Q. What did Carlos say to the officers?

14 A. My car is gone.

15 Q. What did the officers say, if anything, to  
16 Carlos?

17 A. They said, "A white Honda Civic?"

18 Q. And who said that?

19 A. The cops.

20 Q. Which cop?

21 A. The one that was at the door.

22 Q. That you remember?

23 A. Yes.

24 Q. The Caucasian officer?

1 A. Yes.

2 Q. And what happened next?

3 A. He grabbed Carlos and handcuffed him.

4 Q. Who grabbed Carlos and handcuffed him?

5 A. The white, tall Caucasian male I remember.

6 Q. Before that, did Carlos say anything to him?

7 A. He said, "Why are you arresting me? What's  
8 going on?"

9 Q. Is that before?

10 A. During the process of him handcuffing him.

11 Q. Prior to the handcuffing, did Carlos say  
12 anything to the officer?

13 A. Yes. "My car is gone."

14 Q. And then he said, "The white Honda Civic"?

15 A. The cops said, "The white Honda Civic?"

16 Q. And then what was said after "The white Honda  
17 Civic"?

18 A. He asked if it was our car.

19 Q. Carlos asked that?

20 A. No, the cop.

21 Q. And what did Carlos say?

22 A. Yes.

23 Q. What did the officer say after that?

24 A. He just grabbed him. He didn't say anything

1 wall?

2 A. Face first to the wall.

3 Q. What did the officer who was doing this look  
4 like?

5 A. Tall, Caucasian.

6 Q. And what type of uniform did he have on?

7 A. I just noticed the blue uniform. I didn't  
8 know what type.

9 Q. You don't know if it was a Boston Police --

10 A. Boston Police, yeah.

11 Q. You don't know if it was that or a Boston  
12 Housing Authority --

13 A. He was a Boston Police.

14 Q. How do you know it was a Boston Police  
15 uniform?

16 A. Because of the little badge they wear.

17 Q. So you saw a badge that said "Boston Police"?

18 A. Mm-hmm.

19 Q. What did you see this officer do while Carlos  
20 was face first against the wall?

A. He was just -- he had his force against him  
just so he wouldn't be able to move.

I guess what do you mean by force?

Like making sure -- keeping him still, making

1 Q. More than 15?

2 A. Around that number, probably.

3 Q. So around 15 officers?

4 A. Mm-hmm.

5 Q. Do you know if they were -- do you know what  
6 agency they belonged to?

7 A. I just knew -- the rest of them, no. I just  
8 knew the ones that I seen, that I conversated  
9 with, that I talked to.

10 Q. And what agency did those officers belong to?

11 A. Boston Police.

12 Q. And do you know of any other agencies that  
13 were at that location?

14 A. At that time, no.

15 Q. Do you know if there were Boston Housing  
16 police officers there?

17 A. At that time, no.

18 Q. Do you know if there were State Police  
19 troopers there?

20 A. Not at that time.

21 Q. Did you see any?

22 A. Not at that time.

23 Q. At any time did you see State troopers?

A. A State trooper, I remember seeing a State

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1 was out of place.

2 Q. When you say "out of place," was it off the  
3 bed; or was it on the floor? Can you just  
4 tell me a little bit about that.

5 A. The mattress was off on the floor and the  
6 entire bed, the wooden part, was out of  
7 place, out of where I normally put it.

8 Q. So the frame was moved?

9 A. The frame, yes.

10 Q. And was the mattress on the floor?

11 A. Yes.

12 Q. Where was your son at that point?

13 A. He was given to my dad.

14 Q. When you walked into the room --

15 A. When I was going towards the room, I saw the  
16 cop giving him to my dad after the fact of  
the scuffling and --

Q. Did you see any of the scuffling?

A. No, but I heard it.

Q. You heard scuffling?

Mm-hmm.

And what is it that you saw when you -- when  
you first made contact with your son's room,  
what is the first thing that you saw?

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1 looking around?

2 A. Looking around and talking to themselves.

3 Q. Looking around where?

4 A. Just looking in the closets, opening the  
5 drawers, flipping mattress.

6 Q. What were they doing in your kitchen?

7 A. In my kitchen they were looking in the  
8 drawers.

9 Q. And did they do anything in the kitchen other  
10 than look in the drawers?

11 A. I don't remember them doing anything in the  
12 kitchen?

13 Q. Did you see them look in the drawers in your  
14 kitchen?

15 A. The drawers when I remember them. When  
16 everything happened, everything was opened  
and out of place.

Q. But my question is did you see them open the  
drawers?

A. I heard the drawers open and close. I didn't  
see them visually, no.

What did they do in your son's room? Did you  
see them do anything in your son's room?

Everything was out of place in my son's room.

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1 They were looking through the toys, yes, for  
2 the gun. They were. I had -- mm-hmm.

3 Q. So you saw them look for toys --

4 A. Through the basket of toys.

5 Q. -- in your son's room?

6 A. Yes.

7 Q. When did you see them do that?

8 A. During the whole -- when I was in that  
9 hallway with my son standing.

10 Q. Is that before or after you talked to the  
11 detective?

12 A. During when I was talking to the detective.

13 Q. Did you see them look through anything else  
14 in your son's room?

15 A. That I could have seen, no.

Q. What about in your bedroom? Did you see them  
do anything in your bedroom?

A. They were looking under the bed. They leaned  
over to look under the bed. They had a box  
of stuff in the closet. The box was emptied  
out. Everything was on the floor.

What did you see them do in your bedroom?

In my bedroom, I saw them look under the bed.

And who did you see do this?

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1 A. One of the cops.

2 Q. And do you know what agency he belonged to?

3 A. No.

4 Q. Did you see this individual do anything else  
5 other than look under your bed in your  
6 bedroom?

7 A. From where I was, I could only see him look  
8 under my bed.

9 Q. And you didn't see him do anything else  
10 other than that?

11 A. Other than the noises I heard of them  
12 searching, no.

13 Q. In your father's bedroom -- did you see them  
14 do anything in your father's bedroom?

15 A. Yes, they did.

16 Q. What did you see them do?

17 A. I saw them flip the mattress.

18 Q. And did you see them doing anything else  
19 other than flip the mattress?

20 A. Looking inside the closet.

21 Q. In your father's room?

22 A. Yes.

23 Q. And did you see them do anything else other  
24 than look in the closet and flip the mattress

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1 Q. Did you see Norberto in handcuffs at that  
2 time?

3 A. Yes.

4 Q. And how many officers were with him at that  
5 time?

6 A. I don't remember the number.

7 Q. Do you know what type of uniforms they had  
8 on?

9 A. I just remember the blue color, not any  
10 distinctive marks on the uniforms.

11 Q. Do you know if they were Caucasian, African-  
12 American or Hispanic?

13 A. (The witness shakes her head.)

14 Q. Do you know if they were from the Boston  
15 Housing Authority or the Boston Police?

16 A. I don't remember, no.

Q. Did Norberto say anything to you?

A. No.

Q. Did Norberto say anything to anybody else  
while he was being escorted out?

A. I just remember him saying, "Ouch. It  
hurts."

Q. Did you see him actually with the handcuffs  
on, or did you see the handcuffs being placed

1 look around at some point?

2 A. They had already looked around.

3 Q. Yes, but when did it come up. When did that  
4 issue of consent come up? At what point  
5 during the incident?

6 A. They had already taken Carlos and Norberto by  
7 that time.

8 Q. Had they already started searching by then?

9 A. Yes.

10 Q. And what actually did the officer say to you?

11 A. They said that they were going to get a  
12 warrant.

13 Q. Anyway?

14 A. Yes.

15 MS. LITSAS: Objection.

16 Q. Okay. But what did they say more than that  
17 they were going to get a warrant?

18 MS. LITSAS: Objection.

19 A. That they were going to come back and search  
20 some more with the warrant.

21 Q. So how did that relate to the consent issue?

22 MS. LITSAS: Objection.

23 A. It didn't.

24 Q. But did you give them consent to search?

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1 A. Uh-uh.

2 Q. No?

3 A. No.

4 Q. Have you had any other interaction other than  
5 that first reappearance Norberto had about a  
6 year ago with Carlos?

7 A. No.

8 Q. Did he ever stay at your house again after  
9 that?

10 A. No.

11 Q. Would you allow him to stay at your house  
12 again?

13 A. No.

14 Q. And why wouldn't you allow him to stay at  
15 your house again?

16 A. Because of the first experience.

17 Q. And what was that?

18 A. The whole thing happening with the cops and  
19 taking the car without our permission.

20 Q. Turning your attention to now Exhibit 5.

Does the picture show anything else other  
than your vehicle and the damage to the  
bumper?

A. Other than to the bumper and the damage to

1 Q. Did you tell them that?

2 A. They didn't give me a chance.

3 Q. Oh, they didn't give you a chance to ask it?

4 A. Yeah.

5 Q. And what did they do, they grabbed you?

6 A. Yeah.

7 Q. And what did they do?

8 A. I know they slammed me against the wall twice.

9 Q. They slammed you against the wall?

10 A. Yeah.

11 Q. And did they handcuff you?

12 A. The second time they slammed me that's when they  
13 handcuffed me.

14 Q. So you were slammed up against the wall twice and  
15 then they handcuffed you?

16 A. Yes.

17 Q. What happened after that?

18 A. They rushed into my house. I think that's when  
19 they pulled Noberto out or whatever.

20 Q. So the police officers then rushed into your  
21 apartment?

22 A. Yeah.

23 Q. And did you see what they did while they were in  
24 there, because you were in a hallway outside;

1 Q. Let's talk about that. What was the condition of  
2 your apartment when you came back home?

3 A. (Laughs) Everything was flipped over.

4 Q. Everything was flipped over?

5 A. The potty -- because I was potty training my son  
6 during that time -- was flipped over and there was  
7 shit on the floor, you know. All his clothes were  
8 out of his drawers. Do you know what I mean?

9 Q. Was it in that condition before they came in?

10 A. No.

11 Q. Your house was pretty clean?

12 A. Yeah. My house is very clean, you know.

13 Q. Yeah. So they had gone through drawers and left  
14 clothes on the floor. Do you know what happened  
15 or were they searching for something do you think?

16 A. My wife told me that there was an officer trying  
17 to -- well, harassing her, that's what she said,  
18 saying like, "Oh, where's the gun? Where's the  
19 gun?" He was accusing us of having a gun in the  
20 house. Do you know what I mean?

21 Q. Um-hum.

22 A. So by then I was already extremely upset, you know  
23 what I mean, so I just sat down and tried to relax  
24 a little bit, because I did have a long night that

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1                   really. They just asked -- see that's the  
2                   problem.

3                   I'm really kind of shady about  
4                   remembering because I really don't remember  
5                   much about what happened, except for the fact  
6                   that I think I asked in regards to my car.  
7                   They just grabbed me, threw me against the  
8                   wall; and then they threw me against the wall  
9                   face first. Then they just cuffed me after  
10                  that. And then they just took me down.

11                 Q. What happened after that?

12                 A. That's when I was being brought down to the  
13                 vehicle. He apologized or whatever, yelling  
14                 out loud. I was thrown in the vehicle --

15                 Q. Who apologized?

16                 A. Norberto. And then they put me in the  
17                 vehicle. And I sort of recall everybody just  
18                 pointing fingers at me saying, "Yeah. He's  
19                 the one that was driving the car. That's  
20                 him. That's him."

21                   And then again, mind you, I was in  
22                 boxers barefooted. I only had, like, a  
23                 little tank top on. They moved me into a  
24                 wagon, again, on foot, walking about a block

State Police?

A. I guess not.

Q. No?

A. No.

Q. And why's that?

A. Because as far as I know I was arrested by a Boston Police officer. And they're the ones, you know, that threw me against the wall -- and both.

Q. How do you know that?

A. Because the guy that was -- I can't remember his face either. The thing is that his badge said Boston Police Department. That's the first thing that I looked at.

The first thing they did is just threw me against the wall first and just started pointing fingers. And then they just grabbed me and threw me against the other wall, which is in the hallway. If you want any description as to that, that's about all I remember. The rest of that I didn't -- I mean, all I know is I just landed face first against that other wall.

Q. And this was a male police officer that was

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1 A. Yes.

2 Q. And how many times did you clean it a week?

3 A. I don't know. Between both of us, I think we  
4 both, you know, put our hands on it at least  
5 twice a week.

6 Q. And how old were your kids at that time?

7 A. Again, my son --

8 Q. Six months and --

9 A. No. My daughter was not even six months old,  
10 and my son was turning -- I think, yeah, he  
11 was turning three that year. It was two  
12 thousand -- yeah.

13 Q. And when you came to the apartment, did  
14 Detective Harris say anything to you?

15 A. I think he said something but I can't  
16 remember exactly what he said to me. I do  
17 remember that the two officers that were  
18 there did say to me that they were waiting  
19 for a warrant or something to search the  
20 house. I remember me making a smart comment.  
21 "How are you going to wait for a warrant if  
22 you guys already did?"

23 Q. Did they say anything to you after you said  
24 that?

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A. My son.

Q. How old was your son? The three year old?

A. Yes.

Q. What kind of bed did you have for your son?

A. I think it was a little toddler bed. You know, he could he just jump in whenever he wants to and stuff like that.

Q. And is this something that your wife saw someone do?

A. Again, she only told me brief details.

Q. But she had told you something about your son being flipped in bed?

A. As far as I know, that's what she saw. As far as I know.

Q. Did you see your son get flipped in the bed?

A. Of course not. I wasn't there.

Q. Was your son hurt in any way?

A. Probably emotionally the most, if anything.

Q. Do you know if your son was physically hurt in any way?

A. Thank God, I guess not, because I didn't see any bruises or nothing on him.

Q. Did -- when you say your son was hurt emotionally, what do you mean by that?

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1 that, please? Toomey?

2 THE WITNESS: T-O-O --

3 THE REPORTER: That's okay. I  
4 wasn't sure which way it was. Thank you.5 Q. (By Mr. Hrones) Were you -- were  
6 you supervising attorney --

7 A. Yes.

8 Q. -- I mean, supervising sergeant?

9 A. Yes, I was.

10 Q. And what's the name that you  
11 referred to that as, your responsibility?

12 A. The PS, patrol supervisor.

13 Q. Patrol supervisor?

14 A. Yes; short is PS.

15 Q. Okay. And who is superior to whom,  
16 in terms of you and Toomey?

17 A. We were equal.

18 Q. Equal?

19 A. Yes.

20 Q. All right. So did there come a  
21 time when you heard about a car chase?

22 A. Yes.

23 Q. And when was that?

24 A. That was -- I can't give you a

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1 B-3, there's an incident, you were the parole  
2 [sic] supervisor in charge, were you not? You  
3 and Officer Toomey?

A. Yes.

5 MR. DONOHUE: Objection.

6 Q. (By Mr. Hrones) And Sergeant  
7 Toomey.

8 So, at that point, when you arrived  
9 and saw them running, you were the patrol  
10 supervision -- supervisor in charge?

11 A. Yes.

12 Q. So what did you do then, when you  
13 saw them running?

A. I followed.

15 Q And where did you follow them to?

## A. Into 11 Fermoy Heights.

17 Q And from where --

18 A. Intro --

19 Q -- where did you follow them?

20 A. -- into the hallway. And then I  
21 eventually went into the apartment.

22 Q. Do you know why they were going  
23 into that address?

24 A. Yes.

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1 Q. Did you see an old man in there?

2 A. No.

3 Q. You saw a woman in there?

4 A. Yes.

5 Q. And how many children?

6 A. I didn't see any children.

7 Q. And where did you see the  
8 middle-aged man?

9 A. Right in the kitchen of the  
10 apartment.

11 Q. Did you see anyone at the door, as  
12 you went in?

13 A. No, I don't recall.

14 Q. Did you see anyone in the hallway,  
15 other than police officers?

16 A. No, I did not.

17 Q. And so you were in charge, as the  
18 patrol supervisor, when you entered the  
19 apartment?

20 A. Yes.

21 Q. All right. And was Sergeant Toomey  
22 there?

23 A. I don't recall.

24 Q. So what did you do when you got

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1           into the apartment?

2           A.       I spoke to this gentleman.

3           Q.       Yes.

4           A.       And then I observed.

5           Q.       What did you say to the gentleman?

6           A.       I don't recall exactly what I said,  
7                   Counselor.

8           Q.       Did he speak English?

9           A.       No. There was -- no, I don't  
10          believe he did. I remember having a  
11          language-barrier problem.

12          Q.       So how did you speak to him, then?

13          A.       I didn't. The conversation ended.

14          Q.       Did you speak to anyone else?

15          A.       No.

16          Q.       You didn't speak to the woman?

17          A.       I don't believe I did, no.

18          Q.       Now, as you were going up the  
19          stairs, did you see anyone who'd been arrested,  
20          at that point?

21          A.       No.

22          Q.       Did you ever see anyone arrested in  
23          that apartment?

24          A.       I did not.

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1 there?

2 A. I don't believe he was in there.

3 I'm not sure if he was in there because there  
4 was other things going on.

5 Q. So you're not sure whether the  
6 officers found the individual in there?

7 A. Excuse me -- (witness drinking  
8 water)

9 That's correct -- I'm not sure.

10 Q. Well, as the patrol supervisor it  
11 was your business to see whether or not he was  
12 in there; was it not?

13 A. Not necessarily. There was --  
14 there was other things going on, Counselor, as  
15 well.

16 Q. What was your role, as patrol  
17 supervisor, once you arrived at the apartment?

18 A. To, just, oversee everything; make  
19 sure no one gets hurt; make sure no one's rights  
20 are violated; make sure they're working within  
21 the law and rules and regulations and everything  
22 else.

23 Q. So it was your obligation to  
24 determine whether anyone was arrested?

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1 the kitchen. I could observe -- there was  
2 rooms, I believe, on the side, doors open. I  
3 could, kind of, observe everything from my  
4 vantage point.

5 Q. Did you try to talk to the woman  
6 that was there?

7 A. I don't recall. I don't think I  
8 did, though.

9 Q. Okay. Why wouldn't you talk to  
0 her?

1 A. I don't know.

2 Q. So you didn't talk to anyone in  
3 there that would give you any information as to  
4 what was going on, or their role?

5 A. Correct.

6 Q. Now, did you give any orders that  
7 day?

8 A. No.

9 Q. You gave absolutely no orders?

0 A. No.

1 Q. You just stood around as a patrol  
2 supervisor and watched?

3 A. Pretty much, yes.

4 Q. And you're sure of that?

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1                   equally in charge --

2                   MS. LITSAS: Objection.

3                   Q. -- is that right?

4                   A. I'm not understanding where you're --

5                   Q. Okay. Sergeant Watts was at the scene,  
6                   right?

7                   A. Yes.

8                   Q. You both were. And you both were in the  
9                   apartment?

10                  A. Yes.

11                  Q. And who was the person that had to make the  
12                  decisions as to how to handle the activity  
13                  in the apartment?

14                  MS. LITSAS: Objection.

15                  A. There was already a supervisor in control.

16                  Q. Who was the supervisor in control?

17                  A. I don't know who that was.

18                  Q. So you played no role as a supervisor --

19                  MS. LITSAS: Objection.

20                  Q. -- is that true?

21                  MS. LITSAS: Objection.

22                  A. I don't understand what you mean.

23                  Q. Did you play any role as a supervisor there?

24                  A. I assisted the other supervisor who was

1 Q. Have you appealed this?

2 A. There is no appeal.

3 Q. There is no appeal for a reprimand?

4 A. I contacted my union, and they told me there  
5 was no appeal of an oral reprimand.

6 Q. Did you want to appeal?

7 A. Yes.

8 Q. And do you believe that's correct, you can't  
9 appeal an oral reprimand?

10 A. I was told by my union officials and their  
11 attorney on it, yes.

12 Q. Now, you don't know to this day who the  
13 supervisor in control was?

14 MS. LITSAS: Objection.

15 A. I'm not sure.

16 Q. Didn't you try to find out who was in  
17 control when it was alleged that you were  
18 responsible?

19 A. The only thing I requested was that they  
20 listen to the audiotapes.

21 Q. Today don't you have some idea of who was in  
22 control?

23 A. I'm not sure who it was.

24 Q. No, but who do you think -- who are the

1 not?

2 A. No, sir.

3 Q. Haven't you heard that he was arrested?

4 A. No, sir.

5 MS. LITSAS: Objection.

6 Q. You have never heard that Pineda was  
7 arrested?

8 A. No, sir.

9 Q. How do you define an arrest?

10 MS. LITSAS: Objection.

11 Q. No, you can answer.

12 A. When someone's booked.

13 Q. When they're handcuffed and led away  
14 handcuffed, are they arrested?

15 MS. LITSAS: Objection.

16 A. Not all the time.

17 Q. So you're saying that if you handcuff  
18 someone, they're not under arrest?

19 MS. LITSAS: Objection.

20 A. That's correct.

21 Q. Why aren't they under arrest when you  
22 handcuff them?

23 MS. LITSAS: Objection.

24 A. You can place people in handcuffs for safety

1 A. They should.

2 Q. So your answer is yes, that the patrol  
3 supervisor should know whether or not  
4 someone has been arrested even if he doesn't  
5 do the arrest or order the arrest?

6 A. Yes.

7 MS. LITSAS: Objection.

8 Q. Do you know who made the arrest that night?

9 A. Mr. Cruz, Officers Foley and Gallagher.

10 Q. Well, who made the arrest of Carlos Pineda?

11 A. I don't know.

12 Q. Who put handcuffs on him?

13 A. I don't know.

14 Q. But the patrol supervisor should have known  
15 that, shouldn't he --

16 MS. LITSAS: Objection.

17 Q. -- as a part of his responsibility?

18 MS. LITSAS: Objection.

19 A. No.

20 Q. So you're saying the patrol supervisor  
21 doesn't have to know whether anyone was  
22 arrested under his watch at an apartment  
23 where he was present?

24 MS. LITSAS: Objection.

WORD INDEX

TRANSCRIPT  
CONDENSED

1 Q. And didn't you ask him what you did wrong?  
2 A. In so many words.  
3 Q. And what did he say?  
4 A. He said that they came to the decision that  
5 I was to receive an oral reprimand.  
6 Q. He didn't give you any details as to the  
7 basis of the decision?  
8 A. No.  
9 Q. Don't you have a right to know why you're  
10 given an oral reprimand under the rules of  
11 the union?  
12 A. He said I violated Rule 102, Section 6,  
13 accountability.  
14 Q. You don't have any right to know more about  
15 the basis?  
16 A. I am not --  
17 MS. LITSAS: Objection.  
18 A. I'm not sure on that, but when I was told  
19 that I couldn't appeal it...  
20 Q. So it's your testimony today that today you  
21 have no idea what was the basis according to  
22 Internal Affairs that you were given a  
23 reprimand --  
24 MS. LITSAS: Objection.